

MAY 31 2005

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIG 4
SECRETARIAT

2005 MAY 31 P 1:09

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5520

DATE RECEIVED: Aug. 25, 2004 (supplemented
by letter received Sept. 17, 2004)

DATE ACTIVATED: March 3, 2005

EXPIRATION OF STATUTE OF
LIMITATIONS: Aug. 20, 2009

COMPLAINANT:

Roger P. Hamilton, Jr.

RESPONDENTS:

The Republican Party of Louisiana and Charles L. Buckels, Jr., in his official capacity as Treasurer;

The Billy Tauzin Congressional Committee and William Clifford Smith, in his official capacity as Treasurer;

Tauzin for Congress and Jacob Giardina, in his official capacity as Treasurer

RELEVANT STATUTES:

2 U.S.C. § 439a(a)(4)

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(f)

11 C.F.R. § 100.87(a)

11 C.F.R. § 100.147(a)

11 C.F.R. § 110.1(h)

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that the committee of a retiring Congressman transferred funds to a state party committee which, in turn, spent those funds in support of the Congressman's son, who was a candidate seeking to succeed his father in office. Here, the complaint's only allegation suggesting the earmarking of funds is rebutted by the responses.

Furthermore, the timing and amounts of the relevant transactions do not provide a sufficient basis to investigate whether the Respondents violated the Act's earmarking provisions. We therefore recommend that the Commission find no reason to believe that the relevant committees violated 2 U.S.C. § 441a and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complainant broadly alleges that the campaign committee of Rep. Wilbert J. "Billy" Tauzin II ("Tauzin II Committee") intended to transfer funds to the Republican Party of Louisiana ("RPL") with the understanding that the party committee would, in turn, direct those funds to benefit the campaign committee of the Congressman's son, Wilbert J. "Billy" Tauzin III ("Tauzin III Committee"). *See* Complaint and Supplement to Complaint. Mr. Tauzin III was a candidate for Congress from the Third Congressional District of Louisiana—an office then held by his father, who did not seek re-election.¹

Although the original complaint makes prospective allegations concerning the relationship between the Tauzin committees and the RPL, the sole support it offers for the allegation comes from an attached article discussing the relationship between the Tauzin committees and the National Republican Congressional Committee ("NRCC"). The attachment to the Complaint is a portion of a newsletter, the "Louisiana Political Fax Weekly," which notes

¹ Pursuant to Louisiana election law, all Congressional candidates from all parties appeared on the ballot on the date of the federal general election (November 2, 2004). For purposes of the Federal Election Campaign Act of 1971, as amended (the "Act"), the candidates who were entered in the Congressional general election were "treated as candidates who also had a primary election on ... the last day to file for the general election ballot" (or, in that election cycle, August 6, 2004). *See* Advisory Opinion 2004-29. In the races where no candidate received more than 50% of the vote, a run-off election between the top two candidates was held on December 4, 2004. In the Third Congressional District, Mr. Tauzin III won a place in the run-off election, but lost in that election to Charles J. "Charlie" Melancon. *See generally* www.sos.louisiana.gov/elections/elections-index.htm.

1 that Rep. Tauzin II had "\$850,000 in his campaign account, which he can transfer all or part of to
2 the [NRCC]." Complaint Attachment at 1. The newsletter also states that "[t]he congressman
3 cannot earmark his contribution to the party to be used on his son's behalf, but there is little
4 chance the campaign committee would do otherwise." *Id.* at 2. It then reports that Rep. Tauzin
5 II's communications director (Ken Johnson) said, "There may be some winking and nods, but no
6 deals." *Id.* at 2.

7 Later, the Complainant filed a supplement to the complaint. Attached to the supplement
8 was an RPL mailing in support of Mr. Tauzin III. The Complainant describes the mailing as the
9 type of activity that he "feared would happen," which was "why [he] issued the original
10 complaint." Supplement to Complaint.²

11 The Respondents deny the earmarking allegations. The Tauzin II Committee denies that
12 it earmarked funds transferred to the RPL or the NRCC, and states that the Congressman's
13 communications director was quoted out of context. Response of Tauzin II Committee ("Tauzin
14 II Resp.") at 3-5. The RPL contends that the transfers to the RPL from the Tauzin II Committee
15 and the disbursements by the RPL complied with the Act and regulations, and that the Tauzin II
16 Committee transfers were not earmarked.³ Response of RPL ("RPL Resp.") at 2-4. The Tauzin
17 III Committee denies knowledge of any efforts to funnel Tauzin II Committee money to the
18 Tauzin III Committee. Response of Tauzin III Committee ("Tauzin III Resp.") at 2-4.

² Because its possible involvement was referenced only in an attachment to the Complaint, the NRCC was not named as a respondent in this matter.

³ The RPL notes that it could receive unlimited transfers from the Tauzin II Committee. 2 U.S.C. § 439a(a)(4). It also claims that its disbursements in support of the Tauzin III Committee fell under the "volunteer" exceptions to the definitions of "contribution" and "expenditure," pursuant to 11 C.F.R. §§ 100.87(a) and 100.147(a). *See* RPL Resp. at 2-3.

1 The following chart details the 2004 election cycle transfers from the Tauzin II
2 Committee to the RPL, and the spending by the RPL on behalf of the Tauzin III Committee,
3 through the date of the general election (November 2, 2004):

Date	Activity	Source of Information
Aug. 6, 2004	Tauzin II Comm. transfers \$5,000 to RPL	Tauzin II Comm. disclosure report ⁴
Aug. 27-31, 2004	RPL spends \$29,037.80 for mailing supporting Tauzin III Comm.	RPL Resp. ⁵
Sept. 3, 2004	RPL receives \$35,000 from Tauzin II Comm.	RPL disclosure report ⁶ (Note: Tauzin II Comm.'s disclosure report dates this transfer as Aug. 27, 2004)
Oct. 1-5, 2004	RPL spends \$29,037.80 for mailing supporting Tauzin III Comm.	RPL Resp.
Oct. 6, 2004	RPL spends \$26,037.80 for mailing supporting Tauzin III Comm.	RPL Resp.
Oct. 12, 2004	RPL receives \$150,000 from Tauzin II Comm.	RPL disclosure report (Note: Tauzin II Comm.'s disclosure report dates this transfer as Oct. 4, 2004)
Nov. 1-2, 2004	RPL makes \$30,445 coordinated party expenditure in support of Tauzin III Comm.	RPL disclosure report

4 Neither the Complainant nor the Respondents have produced any of the written instruments that
5 might have constituted or accompanied the transfers of funds from the Tauzin II Committee to
6 the RPL.

⁴ The RPL has not reported the receipt of these funds

⁵ The amounts listed in the RPL's response (at p. 2) that the party spent on "mail piece[s] in support of" the Tauzin III Committee are not itemized as such in the RPL's reported disbursements, presumably because such payments for exempt volunteer activity must be reported as disbursements, but "need not be allocated to specific candidates in committee reports." 11 C.F.R. § 100.147(e).

⁶ Although the RPL disclosure report dates the receipt of these funds as September 3, 2004, the RPL response states that the date of this receipt was September 7, 2004.

Although the Tauzin II Committee asserts that it “has consistently made donations to the National and State Republican Committees to use as such committees see fit,” disclosure reports do not reveal Tauzin II Committee transfers to the RPL during the previous three election cycles. Tauzin II Resp at 2. The Tauzin II Committee gave more consistently to the NRCC, including transfers of \$25,000 on July 21, 2004, and \$20,000 on March 4, 2004. The NRCC transferred \$50,000 to the RPL on August 7, 2004; \$894 on September 14, 2004; \$100,000 on September 27, 2004; and \$70,000 on October 21, 2004. The NRCC also made approximately \$94,000 in coordinated party expenditures, independent expenditures, and direct contributions to the Tauzin III Committee—all of which occurred after the general election (November 2, 2004) and before the run-off election.

B. Analysis

1. Summary of the Law

The Act and the Commission's regulations limit the amount that a person may contribute—directly or indirectly—with respect to a federal election. The Act provides that no person shall make contributions to any candidate and his or her authorized political committee with respect to any election for federal office which, in the aggregate, exceed \$2,000.⁷ 2 U.S.C. § 441a(a)(1)(A). Therefore, the Tauzin II Committee was limited to \$2,000 in aggregate contributions, per election, to the Tauzin III Committee, although it could make unlimited transfers to the RPL, a state party committee. 2 U.S.C. §§ 441a(a)(1)(A) and 439a(a)(4).

⁷ A “person” includes, among other entities, a committee. 2 U.S.C. § 431(11). During the 2004 election cycle, the increased contribution limits of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107-155, 116 Stat. 81 (2002) were in effect, but not yet indexed for inflation under 2 U.S.C. § 441a(c). Therefore, a non-multicandidate political committee could contribute \$2,000 to a candidate committee and a multicandidate political committee could contribute \$5,000 to a candidate committee. 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(2)(A).

Candidates and political committees are prohibited from knowingly accepting any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f).

“[A]ll contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 2 U.S.C. § 441a(a)(8). “Earmarked” is defined as a “designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.” 11 C.F.R. § 110.6(b)(1).

2. Alleged Earmarking

The factual circumstances are not sufficient to support a reason to believe finding that the Tauzin II Committee earmarked its transfers to the RPL to be expended in support of the Tauzin III Committee.⁸ The complaint only alleges implied earmarking and does not provide any information that could substantiate express earmarking. The complaint's allegation that a spokesman for Rep. Tauzin II suggested that it would funnel funds to the Tauzin III Committee is rebutted by the responses. Moreover, in light of recent Commission action addressing implied

⁸ We analyze the transactions at issue under an earmarking theory rather than a theory based upon 11 C.F.R. § 110.1(h). Under section 110.1(h), a contributor is permitted to give to a candidate *and* to a multicandidate committee that supports the same candidate in the same election so long as the contributor does not give to that committee with the knowledge that a substantial portion of the contribution will be contributed to (or expended on behalf of) the candidate in that election, and the contributor does not retain control over the funds. Here, the predicate act of a direct contribution to the candidate and committee during the same election is absent. Specifically, the Tauzin II Committee did not make a general election contribution to the Tauzin III Committee, having made only a \$296 in-kind contribution on June 3, 2004, which was during the “primary.” *See* Note 1. Accordingly, section 110.1(h) is not implicated.

1 earmarking, the timing and amounts of transfers from the Tauzin II Committee to the RPL do not
2 provide a sufficient basis to investigate any violations of the Act's earmarking provisions.

3 The complaint's allegation—that Rep. Tauzin II's Communications Director (Ken
4 Johnson) suggested that the Congressman, by "winking and nodding," would "divert[]
5 earmarked funds to Mr. Tauzin III's campaign"—is, by definition, one of implied earmarking.
6 Complaint at 1 and Attachment at 2. In response, the Tauzin II Committee denies that it has
7 "nodded and winked" with anyone, or that it has "attempted to create any avenue for earmarking
8 or direction of funds to anyone's campaign." Tauzin II Resp. at 6. It also supplies three news
9 articles quoting both Mr. Johnson and the reporter to whom he made the "winking and nodding"
10 comment to support its claim that Mr. Johnson was quoted out of context. *Id.* at Attachments 1-
11 3. In addition, the RPL's response includes an affidavit from Mr. Johnson that supports the
12 assertion that the remarks quoted in the complaint were taken from a general discussion of
13 officeholders' transfers of money, and did not describe the Tauzin II Committee's specific
14 conduct. RPL Resp. at Ex. C. Moreover, the RPL response also includes an affidavit from its
15 treasurer, Charles L. Buckels, Jr., who states that the decisions to spend the amounts in support
16 of the Tauzin III Committee "were made independently of the transfers from" the Tauzin II
17 Committee. RPL Resp. at Ex. D. Finally, the Tauzin III Committee and the candidate himself—
18 in a sworn statement—assert that "[n]o funds have been diverted and/or earmarked for [the
19 Tauzin III Committee] from [the Tauzin II Committee], [his] family personally or ... any other

1 person or source.” Tauzin III Resp. at 3-4. In summary, the sole allegation of implied
2 earmarking does not withstand the rebuttals of the respondents.⁹

3 Moreover, the amount of the Tauzin II Committee’s October 2004 donation to the RPL is
4 considerably larger than the amounts spent by the RPL on mailings in support of Mr. Tauzin III’s
5 candidacy six to 12 days earlier. The timing and amount of the Tauzin II Committee’s
6 September 2004 donation to the RPL is considerably closer to both the time and the amount of
7 the RPL’s first payment for a mailing in support of Mr. Tauzin III.¹⁰ However, this is a case in
8 which the specific allegation is implied earmarking through “winking and nods, but no deals.”
9 The Commission previously declined to find implied earmarking in the presence of much
10 stronger indicia than “winking and nods, but no deals,” in MURs 4831 and 5274 (Missouri
11 Democratic State Committee, or “MDSC”). In MDSC, a state party committee received 19
12 contributions containing indicia of express earmarking (check memo lines or accompanying
13 documents identified the candidate) and 59 contributions for which there were indicia of implied
14 earmarking (contributions were made to the state party committee when the candidate was
15 soliciting such contributions, these contributions were deposited with slips or notes containing
16 the candidate’s name, and a former staff member of the candidate left his campaign to work for

⁹ See MUR 4960 (Clinton for Senate Exploratory Committee) Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas (Dec 21, 2000) (“a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint”).

¹⁰ The RPL claims that the sequence of transactions in this matter disproves earmarking RPL Resp. at 4. Specifically, it claims that the state party made its disbursements in support of Mr. Tauzin III *before* the RPL received the \$150,000 transfer from the Tauzin II Committee, and thus the transfer “could not have been earmarked for candidate Tauzin’s campaign.” *Id.* (emphasis in original). Although we recommend that the Commission find no reason to believe that the committees violated the earmarking provisions of the Act, we do not agree with the RPL’s assertions that the sequence of transactions is dispositive. An intermediary could make a disbursement in support of a candidate with the expectation that its spending would be replenished shortly thereafter. See, e.g., MUR 2335 (Morrison) Amended Comm’n Cert (Apr. 19, 1988) (under section 110.1(h) analysis, some contributions to the state party committee post-dated the state party committee’s expenditures in support of the candidate).

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1 the state party committee during the relevant period). *See* MURs 4831 and 5274 (MDSC),
2 General Counsel's Report #5 at 2.
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6 Given the particular kind of conduct alleged in the complaint, and the detailed nature of
7 the rebuttals, it would seem extremely unlikely that any investigation of this matter would
8 produce evidence that even rose to the level rejected by the Commission as a basis for probable
9 cause and conciliation in MDSC. Under these circumstances, the available information does not
10 appear to be sufficient to support a reason to believe recommendation.

11 3. Conclusion

12 In summary, the comments of a spokesman for Rep. Tauzin II—rebutted by the
13 responses—and the timing and amounts of the transactions of the Tauzin II Committee constitute
14 insufficient information to support a reason to believe finding that the Tauzin II Committee, the
15 RPL, or the Tauzin III Committee violated the Act's earmarking provisions.¹¹ This Office
16 therefore recommends that the Commission find no reason to believe that the Billy Tauzin
17 Congressional Committee and William Clifford Smith, in his official capacity as treasurer,
18 violated 2 U.S.C. § 441a. Furthermore, we recommend that the Commission find no reason to
19 believe that the Republican Party of Louisiana and Charles L. Buckels, Jr., in his official

¹¹ As noted above in footnote 2, the NRCC was not named as a respondent in this matter. As with the named respondents, discussed above, the timing and amount of the funds relating to the Tauzin II Committee, the NRCC, and the Tauzin III Committee do not support a theory of earmarking. Accordingly, we do not make any recommendations regarding the non-respondent NRCC.

capacity as treasurer, violated 2 U.S.C. § 441a. Finally, we recommend that the Commission find no reason to believe that Tauzin for Congress and Jacob Giardina, in his official capacity as treasurer, violated 2 U.S.C. § 441a.

III. RECOMMENDATIONS

1. Find no reason to believe that the Billy Tauzin Congressional Committee and William Clifford Smith, in his official capacity as treasurer, violated 2 U.S.C. § 441a.
2. Find no reason to believe that the Republican Party of Louisiana and Charles L. Buckels, Jr., in his official capacity as treasurer, violated 2 U.S.C. § 441a.
3. Find no reason to believe that Tauzin for Congress and Jacob Giardina, in his official capacity as treasurer, violated 2 U.S.C. § 441a.
4. Approve the appropriate letters.
5. Close the file in this matter.

Lawrence H. Norton
General Counsel

Date

5/31/05

BY:

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